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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/825,430

04/16/2004

Hirokazu Sakai

252010US0

9934

22850

7590

02/21/2008

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER

VENKAT, JYOTHSNA A

ART UNIT

PAPER NUMBER

1615

NOTIFICATION DATE

DELIVERY MODE

02/21/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/825,430	<b>Applicant(s)</b> SAKAI ET AL.	
	<b>Examiner</b> JYOTHSNA A. VENKAT Ph. D	<b>Art Unit</b> 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/5/05; 4/23/07</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Receipt is acknowledged of amendment to specification, election filed and remarks filed on 11/29/07. Receipt is also acknowledged of IDS filed on 8/5/05 and 4/23/07. Claims 1-9 are pending in the application and the status of the application is as follows:

#### ***Election/Restrictions***

1. Applicant's election with traverse of group I in the reply filed on 11/29/07 is acknowledged. The traversal is on the ground(s) that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctiveness between the identified groups and it has not been shown that a burden exists in searching the claims of the two groups. This is not found persuasive because restriction between groups I and II is in compliance with MPEP § 806.05(h). Additionally it is a search burden to examine the composition claims and method of use claims since art anticipating or rendering obvious composition claims would not anticipate or render obvious method of use claim of group II.

The requirement is still deemed proper and is therefore made FINAL.

2. Claim 9 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 11/29/07.

3. Applicant's election of species drawn to lipid A belonging to formula I under amphipathic amide and ethylene glycol stearate belonging to compound B in the reply filed on 11/29/07 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

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4. Claims 1-8 are pending in the application and claims 1-8 would be examined to the extent that it reads on lipid A belonging to formula for amphipathic amide and ethylene glycol distearate under compound B.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-8 are rejected under 35 U.S.C. 102(e) as being anticipated by PGPUB US 2004/0156815 (PGPUB '815).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

See below for table 1 and example

		Examples			Comparative Examples		
		1	2	3	1	2	3
(A)	Amphiphilic amide lipid A	2	2	---	2	---	---
	Amphiphilic amide lipid B	---	---	2	---	---	---
(B)	Sodium polyoxyethylene (2) lauryl ether sulfate	10	10	10	10	10	10
	Sodium lauryl sulfate	5	5	5	5	5	5
(C)	Lactic acid	1	---	1	1	1	---
	Maleic acid	---	1	---	---	---	---
Others	Myristyl alcohol	1	1	1	1	1	1
	Coconutmonocapronamide	0.5	0.5	0.5	0.5	0.5	0.5
	Diethylene glycol distearate	1	1	1	1	1	1
	Cationized hydroxyethyl cellulose	0.3	0.3	0.3	0.3	0.3	0.3
	Cationized guar gum	0.5	0.5	0.5	0.5	0.5	0.5
	pH regulator (sodium hydroxide, citric acid)	q.s.*	q.s.*	q.s.*	q.s.*	q.s.*	q.s.*
	Purified water	Balance	Balance	Balance	Balance	Balance	Balance
	pH	3.5	3.5	3.5	5	3.5	6
Evaluation	Smoothness of hair	A	A	A	C	C	C
	Moist feeling of hair	A	A	A	C	C	C
	Physical property-improving ratio of hair	A	A	B	C	C	C

\* An amount to adjust the pH

7. Example 1 has claimed species lipid A and ethylene glycol distearate. Cationic guar gum in example 1 reads on claims 6-7.

[10156] The pH in the description below is a value of the composition diluted with water to 20 times the weight of the composition when measured at 25° C.

8. Examples 1 to 3, and Comparative Examples 1 to 3

9. The above paragraph reads on claim 8.

10. Claims 1-8 are rejected under 35 U.S.C. 102(e) as being anticipated by PGPUB US 2004/0157984 (PGPUB '984).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the

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inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

See below for table 1 and example 1.

		Examples			Comparative Examples			(wt. %)
		1	2	3	1	2	3	
(A)	Amphiphilic amide lipid A	2	2	---	2	---	---	
	Amphiphilic amide lipid B	---	---	2	---	---	---	
(B)	Sodium polyacrylate (3) lauryl ether sulfate	10	10	10	10	10	10	
	Sodium lauryl sulfate	5	5	5	5	5	5	
(C)	Dimethylpolysiloxane emulsion <sup>1,2</sup>	2	2	---	---	---	---	
	Amino-modified silicone emulsion <sup>1,2</sup>	---	0.5	0.5	---	0.5	---	
Others	Myristyl alcohol	1	1	1	1	1	1	
	Cocoylmonethanolamide	0.5	0.5	0.5	0.5	0.5	0.5	
	Ethylene glycol distearate	1	1	1	1	1	1	
	Cationic hydroxyethyl cellulose	0.5	0.5	0.5	0.5	0.5	0.5	
	Cationic guar gum	0.5	0.5	0.5	0.5	0.5	0.5	
	pH regulator (sodium hydroxide, citric acid)	q.s. <sup>1,2</sup>	q.s. <sup>1,2</sup>	q.s. <sup>1,2</sup>	q.s. <sup>1,2</sup>	q.s. <sup>1,2</sup>	q.s. <sup>1,2</sup>	
	Filled water	Balance	Balance	Balance	Balance	Balance	Balance	
pH		5.5	5.5	5.5	5.5	5.5	5.5	

11. Example 1 has claimed species lipid A and ethylene glycol distearate. Cationic guar gum in example 1 reads on claims 6-7.

12. Example 1 has claimed species lipid A and ethylene glycol distearate. Cationic guar gum in example 1 reads on claims 6-7.

[0056] The pH in the description below is a value of the composition diluted with water to 20 times the weight of the composition when measured at 25° C.

13. Examples 1 to 3, and Comparative Examples 1 to 3

14. The above paragraph reads on claim 8.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT Ph. D whose telephone number is

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571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/JYOTHSNA A. VENKAT Ph. D/  
Primary Examiner, Art Unit 1615**